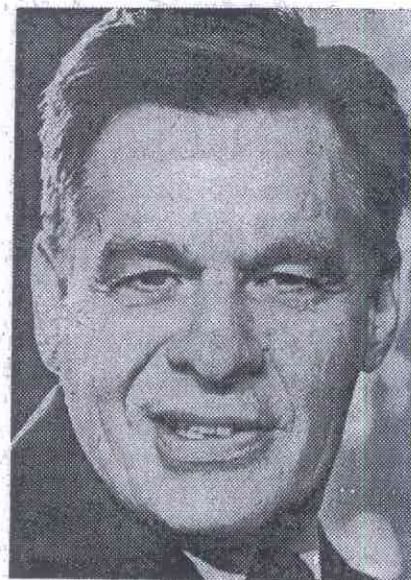




President Nixon

Walter Pincus

Did Mr. Nixon Mislead the Prosecution?



Henry Petersen

According to a theory propounded by James St. Clair, Mr. Nixon's chief defense lawyer, the President is the nation's chief law enforcement officer. As such, the President's obligation when informed of a crime—such as Mr. Nixon was on March 21, 1973—is not necessarily to turn that information over to the proper Justice Department officials, but only to see that the judicial process is set in motion and carried out.

In his theorizing, St. Clair did not deal with the question of a President who attempts to change the direction of a judicial process already in motion by supplying Justice Department officials with false, incomplete and thus misleading information. However, according to my reading of the released White House transcripts, that seems to have been the approach Mr. Nixon adopted in his dealings with Assistant Attorney General Henry Petersen after April 15, 1973, when Petersen supposedly took complete control of the Watergate investigation.

The prosecutors at that time had John Dean and Jeb Stuart Magruder as witnesses with Mr. Nixon's two top aides, H. R. Haldeman and John Ehrlichman, former Attorney General John Mitchell and possibly the President, himself, as potential targets of the investigation. The transcripts show Mr. Nixon sought to divert Petersen and the investigators from himself, Haldeman and Ehrlichman and instead put their focus on Mitchell, Magruder and Dean.

In their first private meeting on the afternoon of April 16, 1973, the President tried to undermine Dean's credibility with Petersen, who had to decide

whether to give Mr. Nixon's former counsel immunity for his future testimony against Haldeman and Ehrlichman.

"A month ago," the President told Petersen, "I got Dean in and said (inaudible) a report (inaudible) Camp David and write a report. The report was not frankly accurate. Well, it was accurate but it was not full. And he (Dean) tells me the reason it wasn't full, was that he didn't know. Whether that is true or not I don't know. Although it wasn't I'm told . . . So then I put Ehrlichman to work on it." The

real story on Dean at Camp David, as shown by the transcripts and Senate Watergate Committee testimony, was that Dean was directed to write a report that by design would be incomplete. It was to serve, as Ehrlichman said in a March 22, 1973 planning session, "to bottom (the President's) de-

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fense" and "the report says nobody was involved, and you have to be consistent with that." The President, himself, was later to say to his aides. "At Camp David, (Dean) was to write the (expletive deleted) up so we could put out a statement. (Dean) said, 'I can't write a statement that you can put out.'" (Emphasis added.)

If that was the real story, where did the story given Petersen come from? According to the transcripts, it was

cooked up at an April 16 meeting of the President, Haldeman and Ehrlichman just hours before Petersen arrived. "How has the scenario worked out?" the President asked. "Well," says Haldeman, "it works out very good." Haldeman goes on to describe how the President's suspicions were to have been raised by the earlier Dean report and subsequently he was sent to Camp David. "He came down and said, 'I can't,'" Ehrlichman says and Haldeman adds, "Then you realized that there was more to this than you had been led to believe." Ehrlichman follows with, "You took Dean off the case right then."

For a moment during this creative process, the President is puzzled, trying to remember the truth. "Why did I take Dean off? Because he was involved? I did it, really, because he was involved with (then acting FBI Director L. Patrick) Gray." Haldeman quickly brought the musing Chief Executive back by summing up: "The scenario is that he told you he couldn't write a report so obviously you had to take him off."

At a noon meeting that day between Haldeman and the President, discussion centered on a plan to have

Haldeman release a public statement about the \$350,000 White House cash fund that was used, in part, to support Watergate defendants. In cautioning against haste in making the statement, the President declares, "... you guys have to see what in the hell again, what (Fred) LaRue testifies." LaRue, a close Mitchell aide, had handled the money transfers and was known to be talking to the prosecutors.

That evening, the President called Petersen at his home and asked "if there were any developments" he "should know about." Petersen, of course, was getting reports on grand jury testimony and plea bargaining by Magruder, Dean and LaRue. The Assistant Attorney General was in an awkward position since the material his prosecutors were receiving implicated Mr. Nixon's two top aides. The President, however, assured Petersen "that of course you know anything you tell me as I think I told you earlier, will not be passed on." (Emphasis added.)

With that, Petersen described the day's developments: La Rue had gone before the grand jury, broken down in tears and admitted obstructing justice; Herbert Kalmbach, the President's personal lawyer, would be called before the grand jury; Dean had named Haldeman as the one who had authorized Kalmbach to raise money for Watergate defendants and Dean had said Watergate conspirator G. Gordon Liddy "confessed to Dean on June 19th (two days after the break-in)—then Dean told Ehrlichman."

The next morning at 9:47 a.m., the

President, disregarding his promise to Petersen, relayed Petersen's account of Dean's disclosures to Haldeman. "Get (John) Ehrlichman and yourself," the President then suggested, "and sit down and do some hard thinking about what kind of strategy you are going to have on the money. You know what I mean." Mr. Nixon also ordered Haldeman to question Kalmbach about his dealings with Dean. "Be sure Kalmbach is at least aware of this," the President added—"La Rue has talked

very freely. He is a broken man."

Mr. Nixon saw Petersen again on April 27. By that date Haldeman had listened to the March 21 tape at least twice, discussed it at length with the President and given him extensive notes. When Petersen walked into his office the President was furious. Reporters for The New York Times and The Washington Post were calling the White House to check allegations that Dean had suggested presidential involvement in Watergate. "If Dean is implicating the presidency," Mr. Nixon said, "we are going to damned well find out about it ... Let me tell you, the only conversation we had with him, was that famous March 21st conversation I told you about where he told me about (William O.) Bittman (Watergate conspirator E. Howard Hunt's lawyer) coming to him. No, the Bittman request for \$120,000 for Hunt." Only conversation? There had been 36 other meetings and phone calls on Watergate with the President and Dean as participants. As far as the March 21 discussion of money for defendants was concerned, Mr. Nixon told Petersen: "And believe me, nothing was approved. I mean as far as I'm concerned ... as far as I'm concerned turned it off totally." Totally? The President on March 21 did not halt the \$75,000 payment which was made to Hunt that night; he voiced no objection to it and may even have ordered it made.

During that same April 27 meeting, the President also gave Petersen his version of the March 21 clemency discussion: "I said first you can't give him clemency. Somebody had thrown out something to the effect that Dean reported that Hunt had an idea he was going to get clemency around Christmas. I said, 'Are you kidding? You can't get clemency for Hunt!'"

As he talked to Petersen, the President must have known, thanks to Haldeman's review of the March 21 tape, that he had told Dean he knew of Hunt's desire for commutation of sentence; and that he *did* know that White House aide Charles Colson had been the one who discussed clemency with Hunt's lawyer. He also knew it was Colson who supposedly had given Hunt the idea for a Christmas release. Indeed, it was on March 21 that the President suggested nothing could be done for Hunt until after the '74 election, if then; and it also was Mr. Nixon who suggested: "The only thing we could do with (Hunt) would be to parole him like the (unintelligible) situation." But the President never told Petersen any of that.

The Constitution says that the President has a duty to see that the laws are faithfully executed. The transcripts indicate that Mr. Nixon, in his direct dealings with the Justice Department official charged with the Watergate investigation, apparently failed to fulfill that duty.